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Wyatt Allen Huddleston et al

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Examiner Name

Joseph E. Avellino

Attorney Docket Number

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

Ex Parte **Wyatt Allen Huddleston**

Application No. **10/045,724**

Filed: **October 26, 2001**

For: **METHOD AND APPARATUS FOR BROKERING OF CONTROL
INSTRUCTIONS OF AN INTELLIGENT DEVICE**

Group: **2143**

Examiner: **Avellino, Joseph E.**

BRIEF ON BEHALF OF APPELLANTS

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This brief is in furtherance of the Notice of Appeal in this case filed April 28, 2008. This Appeal Brief is being filed on the first business day after the lapse of 2 months from the filing date of the Notice of Appeal.

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TABLE OF CONTENTS

I. REAL PARTY IN INTEREST	3
II. RELATED APPEALS AND INTERFERENCES	3
III. STATUS OF CLAIMS	3
IV. STATUS OF AMENDMENTS.....	4
V. SUMMARY OF THE CLAIMED SUBJECT MATTER	8
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL	10
VII. GROUPING OF THE CLAIMS	11
VIII. ARGUMENT	12
IX. APPENDIX I - CLAIMS.....	21
X. APPENDIX II - EVIDENCE	27
XI. APPENDIX III - RELATED PROCEEDINGS.....	28

I. REAL PARTY IN INTEREST

Motorola, Inc. is the real party in interest

II. RELATED APPEALS AND INTERFERENCES

There are NO related appeals or interferences.

III. STATUS OF CLAIMS

This is in response to the January 28, 2008 non-final rejection of claims 1-22 after a lengthy prosecution.

A total of twenty-two (22) claims have been presented in the prosecution of the present application. Claim 18 was amended in the first Amendment Under 37 CFR 1.111 filed June 9, 2005 to add "via the wireless communication network" to the claim. New claims 21 and 22 were added in the Amendment Under 37 CFR 1.111 filed April 16, 2007. Claims 1, 11 and 18 were also amended in this Amendment. Claims 1, 11, 18 and 21 were amended in the Amendment Under 37 CFR 1.111 filed on September 6, 2007. All twenty-two (22) of these claims are presently pending including the four (4) independent claims 1, 11, 18 and 21.

Claims 1 and 11 have been amended twice. Claim 18 has been amended three times and claim 21 has been amended one time. Presently no claims have been canceled.

The Examiner, in the Office Action dated January 28, 2008, continued to reject claims 1-22. The Examiner, in the Office Action dated January 28, 2008, withdrew a 35 U.S.C. §112, first paragraph rejection, but continued to reject claims 1-3, 5, 8, 9, 11-13, 15 and 17-22 under 35 U.S.C. 103(a) as being unpatentable over Escobosa, et al (U.S. Publication No. 2003/0151538) in view of Hayes, et al. (U.S. Publication No. 2002/0140571). Claims 4, 6, 7, 14 and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Escobosa-Hayes in view of Maymudes (U.S. Patent No. 6,748,278). Claim 10 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Escobosa-Hayes in view of Baun, et al. (U.S. Publication No. 2003/0197930).

Thus claims 1 - 22 stand rejected and no claims have been allowed.

The claims on appeal are Claims 1-22.

IV. STATUS OF AMENDMENTS

No amendments have been filed since the January 28, 2008 non-final office action. A brief prosecution history is provided below.

On February 9, 2005 an initial Office Action was mailed to Applicant. Claims 1, 2, 5, 8, 9, 11-12, 15 and 17-20 were rejected under 35 U.S.C. §102(b) as being anticipated by Tessier, et. al. (U.S. Patent No. 5,629,868). Claims 3, 4, 6, 7, 13, 14 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tessier in view of Maymudes (U.S. Patent No. 6,748,278). Claim 10 was rejected under U.S.C §103(a) as being unpatentable over Tessier, et al. (U.S. Patent No. 5,629,868).

In response to the February 9, 2005 Office action on June 9, 2005 an Amendment Under 37 CFR §1.111 was filed by Applicant amending claim 18 to clarify the claim language. Applicant's arguments and amendment were made in an effort to traverse the examiner's rejections of claims 1-20.

On July 7, 2005 a Final Rejection of claims 1-20 was mailed to Applicant. The final rejection noted that the Applicant's arguments filed June 9, 2005 have been fully considered but they are not persuasive. The Examiner still rejected claims 1, 2, 5, 8, 9, 11-12, 15 and 17-20 under 35 U.S.C. §102(b) as being anticipated by Tessier, et. al. (U.S. Patent No. 5,629,868). The Examiner also maintained the rejection of claims 3, 4, 6, 7, 13, 14 and 16 under 35 U.S.C. §103(a) as being unpatentable over Tessier in view of Maymudes (U.S. Patent No. 6,748,278). The Examiner also maintained the rejection of claim 10 under U.S.C §103(a) as being unpatentable over Tessier, et al. (U.S. Patent No. 5,629,868) but added in view of Baun, et al. (U.S. Publication No. 2003/0197930).

In response to the July 7, 2005 Final Office Action on September 2, 2005 a Final Response was filed. On September 8, 2005 an Interview Summary was received stating that an agreement with respect to the claims had not been reached. An Advisory Action was received on September 30, 2005. On November 7, 2005 a Pre-Appeal Brief Request for Review and accompanying comments was filed along with a Notice of Appeal. On February 13, 2006 a Notice of Panel Decision from the Pre-Appeal Brief Review was received by Applicant stating that the rejection was withdrawn and a new office action would be mailed.

On February 21, 2006 an Office Action was mailed to the Applicant. The Examiner rejected claims 1-3, 5, 8, 9, 11-12, 15 and 17-20 under 35 U.S.C. §102(e) as being anticipated by van Ee, et. al. (U.S. Patent No. 6,774,813). The Examiner also rejected claims 4, 6, 7, 14 and 16 under 35 U.S.C. §103(a) as being unpatentable over van Ee in view of Maymudes (U.S. Patent No. 6,748,278). Claim 10 was also rejected under U.S.C §103(a) as being unpatentable over van Ee in view of Baun, et al. (U.S. Publication No. 2003/0197930).

In response to the Office Action dated February 21, 2006 a Response was filed on May 22, 2006.

On June 15, 2006 a Final Office Action was mailed to the Applicant. The Examiner maintained all the same rejections as the office action received on February 21, 2006. Claims 1-3, 5, 8, 9, 11-12, 15 and 17-20 was rejected under 35 U.S.C. §102(e) as being anticipated by van Ee, et. al. (U.S. Patent No. 6,774,813). Claims 4, 6, 7, 14 and 16 was rejected under 35 U.S.C. §103(a) as being unpatentable over van Ee in view of Maymudes (U.S. Patent No. 6,748,278). Claim 10 was rejected under U.S.C §103(a) as being unpatentable over van Ee in view of Baun, et al. (U.S. Publication No. 2003/0197930).

In response to the Final Office Action dated June 15, 2006 a Notice of Appeal and Pre-Appeal Brief Request was filed on August 15, 2006. On November 6, 2006 a Notice

of Panel Decision from Pre-Appeal Brief Review was received stating that the rejection has been withdrawn and a new office action would be mailed.

On November 16, 2006 an Office Action was mailed to the Applicant. The Examiner rejected claims 1-3, 5, 8, 9, 11-12, 15 and 17-20 under 35 U.S.C. §103(a) as being unpatentable over van Ee, et. al. (U.S. Patent No. 6,774,813) in view of Rosenberg, et al. (U.S. Publication No. 2003/0013434). The Examiner also rejected claims 4, 6, 7, 14 and 16 under 35 U.S.C. §103(a) as being unpatentable over van Ee in view of Rosenberg in view of Maymudes (U.S. Patent No. 6,748,278). The Examiner also rejected claim 10 under 35 U.S.C §103(a) as being unpatentable over van Ee in view of Rosenberg in view of Baun, et al. (U.S. Publication No. 2003/0197930).

In response to the November 16, 2006 Office Action an Amendment was filed on April 16, 2007. Claims 1, 11, and 18 were amended to clarify the claimed invention. New claims 21 and 22 were added.

On April 18, 2007 an Interview Summary mailed to the Applicant stating that an agreement with respect to the claims was not reached.

On June 6, 2007 a Final Office Action was mailed to the Applicant. The Examiner cited new references in rejecting claims 1-3, 5, 8, 9, 11-13, 15 and 17-22 under 35 U.S.C. §103(a) as being anticipated over Escobosa, et al. (U.S. Publication No. 2003/0151538) in view of Allport (U.S. Patent No. 6,104,334). The Examiner cited the new reference in rejecting claims 4, 6, 7, 14 and 16 under 35 U.S.C. §103(a) as being unpatentable over Escobosa-Allport in view of Maymudes (U.S. Patent No. 6,748,278). The Examiner also cited the new reference in rejecting claim 10 under U.S.C §103(a) as being unpatentable over Escobosa-Allport in view of Baun, et al. (U.S. Publication No. 2003/0197930).

In response to Office Action dated June 6, 2007 an Amendment with RCE was filed on September 6, 2007. Claims 1, 11, 18 and 21 were amended to further clarify the invention.

On September 26, 2007 an Office Action was mailed to the Applicant. In the Office Action the Examiner rejected claims 1-22 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. The Examiner also rejected claims 1-3, 5, 8, 9, 11-13, 15 and 17-22 under 35 U.S.C. §103(a) as being unpatentable over Escobosa, et al. (U.S. Publication No. 2003/0151538) in view of Allport (U.S. Patent No. 6,104,334). The Examiner maintained the rejected claims 4, 6, 7, 14 and 16 under 35 U.S.C. §103(a) as being unpatentable over Escobosa-Allport in view of Maymudes (U.S. Patent No. 6,748,278). The Examiner also maintained the rejected claim 10 under U.S.C §103(a) as being unpatentable over Escobosa-Allport in view of Baun, et al. (U.S. Publication No. 2003/0197930).

In response to the Office Action dated September 26, 2007 a Response was filed on December 26, 2007.

On January 28, 2008 an Office Action was mailed to the Applicant. The Examiner cited new references. The Examiner rejected claims 1-3, 5, 8, 9, 11-13, 15 and 17-22 under 35 U.S.C. §103(a) as being unpatentable over Escobosa, et al. (U.S. Publication No. 2003/0151538) in view of Hayes (U.S. Publication No. 2002/0140571). The Examiner rejected claims 4, 6, 7, 14 and 16 under 35 U.S.C. §103(a) as being unpatentable over Escobosa-Hayes in view of Maymudes (U.S. Patent No. 6,748,278). The Examiner rejected claim 10 under U.S.C §103(a) as being unpatentable over Escobosa-Hayes in view of Baun, et al. (U.S. Publication No. 2003/0197930).

In response to the Office Action dated January 28, 2008 a Notice of Appeal was filed on April 28, 2008.

No further amendments or responses have been filed since April 28, 2008.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention concerns various aspects of command brokering on behalf of an intelligent device. The invention contemplates a wireless internet access device (WIAD) wherein a desired function is defined. This function and the intelligent device are identified to a web site having access to control instructions for the intelligent device. The website returns a subset of control instructions for controlling the intelligent device to perform the desired function. The WIAD forwards the subset of control instructions to the intelligent device to effect the desired function. The WIAD does not have a complete set of control instructions for the intelligent device. An overall communication network is shown in FIG. 1, a block diagram of an intelligent device is shown in FIG. 2, a block diagram of a WIAD is shown in FIG. 3, a block diagram of a web site is shown in FIG. 4, and a general method is reflected in FIG. 5.

Claim 1 specifically defines a method for command brokering on behalf of an intelligent device (112), comprising the steps of: defining in a wireless internet access device (WIAD) (102, 302) a desired function to be performed by the intelligent device (504), the desired function being only a portion of all functions that the intelligent device is capable of performing; identifying the intelligent device and the desired function (314) to a web site (110) having access to control instruction (414) for the intelligent device, the identifying provided by the WIAD, through a wireless communication network (104) (506); returning, to the WIAD from the web site, only a subset of the control instructions (416) for controlling the intelligent device to perform the desired function (508); and forwarding the subset of the control instructions from the WIAD (318) to the intelligent device to effect the desired function (510), wherein the WIAD does not have a complete set of the control instructions for the intelligent device. A discussion of FIG. 5 starts on page 11 first full paragraph and continues through page 12.

Claim 11 defines a wireless internet access device (WIAD) (FIG. 3, 102) for performing command brokering on behalf of an intelligent device through a wireless communication network coupled to a web site having access to control instructions for the intelligent device, the WIAD comprising: a function interface (302) for defining a desired function to be performed by the intelligent device, the desired function being less than all functions that the intelligent device

is capable of performing; a processor 304 coupled to the function interface for controlling the WIAD; and a communication port (306, 322) coupled to the processor for identifying the intelligent device and the desired function to the web site through the wireless communication network and for receiving a response from the web site, wherein the processor is programmed (see memory 308 and various instructions) to receive from the web site only a subset of the control instructions (316) for controlling the intelligent device to perform the desired function; and forward (318) the subset of the control instructions from the WIAD to the intelligent device to effect the desired function, wherein the WIAD is capable of controlling only a portion of all functions that the intelligent device is capable of performing. See discussion of FIG. 3 beginning at page 7, line 17 and going through page 9.

Claim 18 defines a web site (see FIG. 4) for facilitating command brokering on behalf of an intelligent device through a wireless communication network via a wireless internet access device (WIAD), the web site comprising: a communication port (402) for communicating via the wireless communication network with the WIAD; and a processor (404) coupled to the communication port for controlling the web site, wherein the processor is arranged and programmed (see memory 408 and various instructions) to access control instructions (414) for the intelligent device; receive via the wireless communication network from the WIAD an identification of the intelligent device and an identification of a desired function (412) to be performed by the intelligent device, the desired function being only a portion of all functions that can be performed by the intelligent device; and return only a subset (416) of the control instructions to the WIAD for forwarding to the intelligent device to effect the desired function, wherein the WIAD never has a complete set of the control instructions for the intelligent device.

Claim 21 is a variation of claim 1 and defines a method for command brokering on behalf of an intelligent device, comprising the steps of: defining in a wireless internet access device (WIAD) a desired function to be performed by the intelligent device; identifying the intelligent device and explicitly identifying the desired function to a web site having access to control instructions for the intelligent device by the WIAD, through a wireless communication network; returning, to the WIAD from the web site, only a subset of the control instructions for controlling the intelligent device to perform the desired function; and forwarding the subset of the control

instructions from the WIAD to the intelligent device to effect the desired function, wherein the WIAD is capable of controlling only a portion of all functions that the intelligent device is capable of performing.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- I. Whether, under 35 U.S.C. §103(a), claims 1-3, 5, 8, 9, 11-13, 15 and 17-22 are patentable over Escobosa et al (U.S. Publication No. 2003/0151538) in view of Hayes et al (U.S. Publication No. 2002/0140571).
- II. Whether, under 35 U.S.C. §103(a), claims 4, 6, 7, 14 and 16 are patentable over Escobosa-Hayes in view of Maymudes (U.S. Patent No. 6,748,278).
- III. Whether, under 35 U.S.C. §103(a), claim 10 are patentable over Escobosa-Hayes in view of Baun, et al. (U.S. Publication No. 2003/0197930).

VII. GROUPING OF THE CLAIMS

Claims 1, 11, 18 and 21 are independent in form and are considered separately patentable.

Dependent claims 2-10 depend from independent Claim 1. The patentability of claims 2-10 stands or falls with that of independent claim 1.

Dependent claims 12-17 depend from independent claim 11. The patentability of claims 12-17 stands or falls with that of independent claim 11.

Dependent claims 19 and 20 depend from independent claim 18. The patentability of claim 19 and 20 stands or falls with that of independent claim 18.

Dependent claim 22 depends from independent claim 21. The patentability of claim 22 stands or falls with that of independent claim 21.

VIII. ARGUMENT

- A. Claims 1-3, 5, 8, 9, 11-13, 15 and 17-22 ARE PATENTABLE, under the provisions of 35 U.S.C. §103(a), over Escobosa, et al. (U.S. Publication No. 2003/0151538) in view of Hayes et al (U.S. Publication No. 2002/0140571), since these references taken alone or together do not show or suggest all features of the claimed invention as defined by any of these claims.

Claims 1, 11, 18 and 21 are in independent form with other cited claims dependent on the closest lower numbered one of the independent claims.

Escobosa et al. describes a remote control, which can be upgraded or customized via access to a web site. A user of the remote control selects a function, i.e., selects a consumer device, e.g., TV or DVD, and the remote control is customized or configured accordingly to control that device (see Abstract, etc.). Hayes et al describes a hand held device which is adapted to display information (operating instructions) related to a consumer appliance. The hand held device obtains the instructions from the consumer appliance or from a web site (see Abstract). Hayes et al also describes an approach wherein a layout for the buttons on a remote control can be reconfigured (¶123-130, etc.).

Claim 1, after amendment in response to the June 6, 2007 Office Action, reads:

“A method for command brokering on behalf of an intelligent device, comprising the steps of:

defining in a wireless internet access device (WIAD) a desired function to be performed by the intelligent device, the desired function being only a portion of all functions that the intelligent device is capable of performing;

identifying the intelligent device and the desired function to a web site having access to control instructions for the intelligent device, the identifying provided by the WIAD, through a wireless communication network;

returning, to the WIAD from the web site, only a subset of the control instructions for controlling the intelligent device to perform the desired function; and

forwarding the subset of the control instructions from the WIAD to the intelligent device to effect the desired function,

wherein the WIAD does not have a complete set of the control instructions for the intelligent device.”

With reference to claim 1, The Examiner maintains that Escobosa et al discloses a method for command brokering on behalf of an intelligent device (i.e. home theater equipment) (e.g. abstract). Applicant concedes that this may be a fair construction of Escobosa et al.

The Examiner further maintains that Escobosa et al discloses:

“defining in a client device a desired function to be performed by the intelligent device (i.e. various operations), the desired function being only a portion of all functions that the intelligent device is capable of performing (i.e. the system only downloads IR sequences to perform various operations such as channel tuning to a particular TV station, setting up various equipment, etc.) (§ 65);

identifying the intelligent device and the desired function to a web site (i.e. supplier site 30) having control instructions for the intelligent device by the client device through a network (Figure 4a; §66);

returning to the client device from the web site, a subset of the control instructions (i.e. sequences) for controlling the intelligent device to perform the desired function (i.e. user access the web site to download sequences of pre-programmed instructions to perform various operations) (§65-66); and

forwarding only a subset of the control instructions from the remote control to the intelligent device to effect the desired function (i.e. when the user purchases a pay-per-view movie, the icon and code for unlocking the movie are downloaded to the remote controller, no other codes are downloaded to the remote) (§65-67);

wherein the client device does not have a complete set of the control instructions for the intelligent device (i.e. only those functions the user "drags-and-drops" onto the layout of the remote control will be used on the remote) (§45, 65. and 67).”

Applicant respectfully disagrees with the above view of Escobosa et al. Paragraph [0065] makes it clear that the web site is being accessed to download not the IR command codes (control instructions in the claim language) themselves, but rather sequences of pre-programmed instructions to perform various operations. These sequences are clearly operational instructions

to the user (which button to push, etc.) to facilitate tuning to a particular program or setting up equipment, access numbers, etc. Paragraph [0066] sheds additional light on the teachings of Escobosa et al and states that a user...purchased new home theatre audio amplifier...log onto a particular Web site...identifying the brand/model...not only is the code data (control instructions in language of claims) for that device downloaded into his remote, but also a set of instructions and control sequences which facilitate setup...of the system. Clearly Escobosa et al in [0065], [0066], [0067] contemplates downloading a complete set of IR command codes for a particular consumer device and then additional information, e.g., pre-programmed instructions to the user to perform various operations (setup, etc.), including channel tuning command sequences, pre-defined sequences for setting up appliances, private access codes or numbers to activate premium series, pay per view movies, etc. Nothing in [0065], [0066] explicitly teaches identifying a function to the web site.

Paragraph [0067] may suggest identifying via browsing a premium programming offer and does indicate that a logo/icon and numeric code is downloaded to the remote control. Suppose, one views this as identifying a function as claimed, the other features of the claim are not shown. When the logo is touched the numeric code is transmitted to the TV. From Escobosa et al, the icon and numeric code are downloaded to a remote control after the remote control has received the complete IR code set. The website is providing an Icon and a numeric code, e.g., 12345, and has nothing to do with providing control instructions (IR codes or code data) for a particular device. The numeric sequence is not sent to the intelligent device as a numeric sequence, but rather as control commands (IR codes) corresponding to the numeric sequence. This is an example of a sequence of instructions as clearly discussed in [0065], lines 3-5. This was also discussed in Applicant's December 26, 2007 Response and previously on page 11 next to last paragraph in Applicants June 16, 2007 Response, which is copied below:

"With reference to Escobosa et al [0067] and FIG. 16, Applicant notes that a movie may be selected and, responsive to the selection, an icon indicative thereof is downloaded and placed on the remote controller screen. Assuming that watching the movie amounts to touching the icon, it reasonably follows that touching the icon must send a sequence of IR codes (subset of control instructions) to the home theatre to effect this response. Even if these assumptions are accurate, there is still nothing in Escobosa et al that states or may be reasonably construed to show that this set of IR codes was downloaded along with the icon when the movie was selected. Escobosa et al merely states that the icon and a numeric code were downloaded. It is just as reasonable to assume

that the IR codes to effect watching the movie were locally associated with the icon as it is to assume they were downloaded with the icon. Either assumption in the end is the product of conjecture or speculation and not the teaching of Escobosa et al.”

The Examiner in the January 28, 2008 Office action further cites Escobosa et al ¶45 for the notion that the WIAD does not have a complete set of control instructions for the intelligent device.

Paragraph [0045] along with [0043], [0044] discuss configuring the Escobosa et al remote control for controlling a particular TV, etc. In the configuration mode, the user is allowed to configure blank keys via a drag and drop interface to associate those blank keys with desired functions. Once the configuration for the blank keys is completed, a computer downloads the custom configuration into the remote, which configuration includes all basic functions [0043] and the blank key associated functions. This is not the claimed returning to the WIAD only a subset of control instructions for controlling the intelligent device to perform the desired function. Furthermore, nothing in these paragraphs relate to forwarding this subset of control instructions to the intelligent device as further claimed. *Arguendo*, one may assume that some of these control instructions or IR codes can or will be forwarded at some point to the intelligent device. However, it is just as likely that some portion of this subset will never be forwarded and certainly not only a subset of the control instructions to effect the desired function all as claimed.

The Examiner concedes that “Escobosa does not disclose that the defining is done using the wireless internet access device (i.e. the remote control), rather the remote is defined using a program running on the PC and then the layout is downloaded to the remote.” And then asserts, “In analogous art, Hayes discloses another method for programming a remote control with particular functions which discloses defining on the remote control itself the layout for the remote control (i.e. via setup application 501 and personalization sub-menu 503 configures the remote to the user's liking) (Figure 5; ¶ 123-130). It would have been obvious to one of ordinary skill in the art to combine the teaching of Escobosa with Hayes since Hayes teaches a modifying a similar remote control to that of Escobosa using only the remote control, therefore providing motivation to one of ordinary skill in the art to provide the application used in Escobosa on the remote control in order to realize the benefits used in Hayes, specifically to not require the use of

a PC to reprogram a remote control, thereby making it easier for a user to reprogram the remote control.”

Applicant does not understand how configuring a remote control by reassigning keys within the remote to particular functions as taught by Hayes et al teaches or suggests the features that are missing from Escobosa et al., i.e., defining in a wireless internet access device a desired function to be performed by the intelligent device. Even assuming *arguendo* that Hayes et al may be reasonably construed as the Examiner indicates, this does not supply the claimed feature that the Examiner concedes is missing from Escobosa et al. The claimed feature is defining in a WIAD a desired function to be performed by the intelligent device; not a function to be performed by/at the WIAD. Changing the look and feel of the remote is affecting a function in the remote and not a desired function in the intelligent device, and thus on its face Hayes et al does not show or suggest the claimed features conceded to be missing from Escobosa et al.

In conclusion with reference to claim 1 and the above discussions, Escobosa et al and Hayes et al taken individually or together do not show a WIAD operating via a wireless communication network to identify a function and returning to the WIAD only a subset of control instructions for controlling the intelligent device to perform the desired function, where the subset of control instructions are forwarded from the WIAD to the intelligent device to effect the desired function and the WIAD does not have a complete set of control instructions for the intelligent device all as claimed.

Claim 11, after amendment in response to the June 6, 2007 Office Action, reads:

“A wireless internet access device (WIAD) for performing command brokering on behalf of an intelligent device through a wireless communication network coupled to a web site having access to control instructions for the intelligent device, the WIAD comprising:

a function interface for defining a desired function to be performed by the intelligent device, the desired function being less than all functions that the intelligent device is capable of performing;

a processor coupled to the function interface for controlling the WIAD; and

a communication port coupled to the processor for identifying the intelligent device and the desired function to the web site through the wireless communication network and for receiving a response from the web site,

wherein the processor is programmed to

receive from the web site only a subset of the control instructions for controlling the intelligent device to perform the desired function; and

forward the subset of the control instructions from the WIAD to the intelligent device to effect the desired function,

wherein the WIAD is capable of controlling only a portion of all functions that the intelligent device is capable of performing.”

Similarly and in view of the above discussions, claim 11 is not anticipated by Escobosa et al in combination with Hayes et al, i.e., these references do not show or suggest a function interface for defining a desired function via a WIAD through a wireless communication network and a processor and communication port for identifying the desired function to a web site and receiving, from the web site, only a subset of control instructions to control the intelligent device to perform the desired function and forwarding the subset to the intelligent device to effect the desired function and where the WIAD does not have a complete set of control instructions all as claimed.

Claim 18, after amendment in response to the June 6, 2007 Office Action, reads:

“A web site for facilitating command brokering on behalf of an intelligent device through a wireless communication network via a wireless internet access device (WIAD), the web site comprising:

a communication port for communicating via the wireless communication network with the WIAD; and

a processor coupled to the communication port for controlling the web site,
wherein the processor is arranged and programmed to

access control instructions for the intelligent device;

receive via the wireless communication network from the WIAD an identification of the intelligent device and an identification of a desired function to be performed by the intelligent device, the desired function being only a portion of all functions that can be performed by the intelligent device; and

return only a subset of the control instructions to the WIAD for forwarding to the intelligent device to effect the desired function,

wherein the WIAD never has a complete set of the control instructions for the intelligent device.”

Claim 18 includes features similar to claim 1 or claim 11 and from the above discussions it is clear that Escobosa et al and Hayes et al do not anticipate such features.

Claim 21, after amendment in response to the June 6, 2007 Office Action, reads:

“A method for command brokering on behalf of an intelligent device, comprising the steps of:

- defining in a wireless internet access device (WIAD) a desired function to be performed by the intelligent device;
- identifying the intelligent device and explicitly identifying the desired function to a web site having access to control instructions for the intelligent device by the WIAD, through a wireless communication network;
- returning, to the WIAD from the web site, only a subset of the control instructions for controlling the intelligent device to perform the desired function; and
- forwarding the subset of the control instructions from the WIAD to the intelligent device to effect the desired function,

wherein the WIAD is capable of controlling only a portion of all functions that the intelligent device is capable of performing.”

Claim 21 is similar to claim 1 with varying scope and based on the above discussions it is clear that the combination of Escobosa et al and Hayes et al does not fairly anticipate all features of this claim.

Thus and in view of the discussions above and clear evidence that Escobosa et al and Hayes et al do not teach all features of claims 1, 11, 18, or 21 or, at least by virtue of dependency, claims 2-3, 5, 8, 9, 12-13, 15, 17, 19-20, and 22, Applicant respectfully submits that this combination of references does not support a rejection of any of these claims. Thus claims 1-3, 5, 8, 9, 11-13, 15 and 17-22 ARE PATENTABLE, under the provisions of 35 U.S.C. §103(a), over Escobosa, et al. (U.S. Publication No. 2003/0151538) in view of Hayes et al (U.S. Publication No. 2002/0140571). Therefore, Applicant respectfully requests that the Board reconsider and withdraw the rejection of claims 1-3, 5, 8, 9, 11-13, 15 and 17-22 under 35 U.S.C. 103(a) as being unpatentable over Escobosa et al in view of Hayes et al.

- B. Claims 4, 6, 7, 14 and 16 ARE PATENTABLE, under the provisions of 35 U.S.C. §103(a), over Escobosa-Hayes in view of Maymudes (U.S. Patent No. 6,748,278), since all of these claims are dependent on a claim that is believed to be allowable over this combination of references.

Each of these claims is dependent on either claim 1 or claim 11. Claim 1 and claim 11 are allowable over Escobosa et al and Hayes et al and nothing in Maymudes shows or suggests the teachings that are missing therefrom. Thus claims 1 and 11 are allowable over this combination of references and thus, at least by virtue of dependency, these claims are likewise PATENTABLE.

Therefore, Applicant respectfully requests that the Board reconsider and withdraw the rejection of claims 4, 6, 7, 14 and 16 under 35 U.S.C. 103(a) as being unpatentable over Escobosa et al and Hayes et al and further in view of Maymudes (US Patent No. 6,748,278).

- C. Claim 10 is PATENTABLE, under the provisions of 35 U.S.C. §103(a), over Escobosa-Hayes in view of Baun, et al. (U.S. Publication No. 2003/0197930).

Claim 10 is dependent on claim 1. Claim 1 is allowable over Escobosa et al and Hayes et al. Nothing in Baun et al shows or suggests the teachings missing from Escobosa et al and Hayes et al and thus claim 1 is clearly PATENTABLE over this combination of references. Thus claim 10, at least by virtue of dependency, is similarly PATENTABLE.

Therefore, Applicant respectfully requests that the Board reconsider and withdraw the rejection of claim 10 under 35 U.S.C. 103(a) as being unpatentable over Escobosa-Hayes in view of Baun et al. (US Pub. No. 2003/0197930).

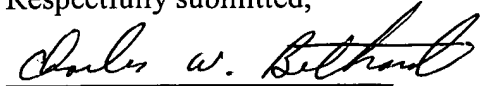
Conclusion

For the reasons set forth, and as is apparent from a review of the above-cited references and claimed subject matter, the pending claims 1-22 present patentable subject matter such that reversal of the rejections is appropriate.

Appl. No. 10/045,724
Appeal Brief dated June 30, 2008
Reply to Office Action dated January 28, 2008

Docket No. PF2200NA

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Charles W. Bethards", written over a horizontal line.

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IX. APPENDIX I - CLAIMS

The text of the claims on appeal is:

1. (Previously Presented) A method for command brokering on behalf of an intelligent device, comprising the steps of:

defining in a wireless internet access device (WIAD) a desired function to be performed by the intelligent device, the desired function being only a portion of all functions that the intelligent device is capable of performing;

identifying the intelligent device and the desired function to a web site having access to control instructions for the intelligent device, the identifying provided by the WIAD, through a wireless communication network;

returning, to the WIAD from the web site, only a subset of the control instructions for controlling the intelligent device to perform the desired function; and

forwarding the subset of the control instructions from the WIAD to the intelligent device to effect the desired function,

wherein the WIAD does not have a complete set of the control instructions for the intelligent device.

2. (Original) The method of claim 1, wherein the forwarding step comprises the step of forwarding the subset through an infrared communication device.

3. (Original) The method of claim 1, wherein the forwarding step comprises the step of forwarding the subset through a radio frequency communication device.

4. (Original) The method of claim 1, wherein the forwarding step comprises the step of forwarding the subset through an ultrasonic communication device.
5. (Original) The method of claim 1, wherein the defining step comprises the step of defining said desired function through a user keypad entry.
6. (Original) The method of claim 1, wherein the defining step comprises the step of defining said desired function through a measurement made by the WIAD.
7. (Original) The method of claim 1, wherein the defining step comprises the step of defining said desired function through a measurement made by the wireless communication network.
8. (Original) The method of claim 1, further including the step of arranging for the web site to have access to the control instructions by pre-programming the control instructions into a memory of the web site.
9. (Original) The method of claim 1, further including a step of arranging for the web site to have access to the control instructions by the web site accessing a server having the control instructions for controlling the intelligent device.
10. (Original) The method of claim 1,
wherein the intelligent device comprises a motorized celestial telescope, and

wherein the defining step comprises the step of determining geographic coordinates corresponding to a position of the WIAD.

11. (Previously Presented) A wireless internet access device (WIAD) for performing command brokering on behalf of an intelligent device through a wireless communication network coupled to a web site having access to control instructions for the intelligent device, the WIAD comprising:

- a function interface for defining a desired function to be performed by the intelligent device, the desired function being less than all functions that the intelligent device is capable of performing;

- a processor coupled to the function interface for controlling the WIAD; and

- a communication port coupled to the processor for identifying the intelligent device and the desired function to the web site through the wireless communication network and for receiving a response from the web site,

- wherein the processor is programmed to

- receive from the web site only a subset of the control instructions for controlling the intelligent device to perform the desired function; and

- forward the subset of the control instructions from the WIAD to the intelligent device to effect the desired function,

- wherein the WIAD is capable of controlling only a portion of all functions that the intelligent device is capable of performing.

12. (Original) The WIAD of claim 11,

wherein the communication port comprises an infra-red communication device, and

wherein the processor is further programmed to forward the subset through the infrared communication device.

13. (Original) The WIAD of claim 11,

wherein the communication port comprises a radio frequency communication device, and

wherein the processor is further programmed to forward the subset through the radio frequency communication device.

14. (Original) The WIAD of claim 11,

wherein the communication port comprises an ultrasonic communication device, and

wherein the processor is further programmed to forward the subset through the ultrasonic communication device.

15. (Original) The WIAD of claim 11, wherein the function interface comprises a keypad.

16. (Original) The WIAD of claim 11, wherein the function interface comprises a measurement element.

17. (Original) The WIAD of claim 11, wherein the function interface is arranged to cooperate with the wireless communication port for communicating with the wireless communication network to define the desired function.

18. (Previously Presented) A web site for facilitating command brokering on behalf of an intelligent device through a wireless communication network via a wireless internet access device (WIAD), the web site comprising:

a communication port for communicating via the wireless communication network with the WIAD; and

a processor coupled to the communication port for controlling the web site, wherein the processor is arranged and programmed to

access control instructions for the intelligent device;

receive via the wireless communication network from the WIAD an identification of the intelligent device and an identification of a desired function to be performed by the intelligent device, the desired function being only a portion of all functions that can be performed by the intelligent device; and

return only a subset of the control instructions to the WIAD for forwarding to the intelligent device to effect the desired function,

wherein the WIAD never has a complete set of the control instructions for the intelligent device.

19. (Original) The web site of claim 18, further comprising a memory pre-programmed with the control instructions.

20. (Original) The web site of claim 18, wherein the processor is programmed to access a server having the control instructions for controlling the intelligent device.

21. (Previously presented) A method for command brokering on behalf of an intelligent device, comprising the steps of:

defining in a wireless internet access device (WIAD) a desired function to be performed by the intelligent device;

identifying the intelligent device and explicitly identifying the desired function to a web site having access to control instructions for the intelligent device by the WIAD, through a wireless communication network;

returning, to the WIAD from the web site, only a subset of the control instructions for controlling the intelligent device to perform the desired function; and

forwarding the subset of the control instructions from the WIAD to the intelligent device to effect the desired function,

wherein the WIAD is capable of controlling only a portion of all functions that the intelligent device is capable of performing.

22. (Previously presented) The method of claim 21 wherein the desired function comprises a set of functions to be performed by the intelligent device.

X. APPENDIX 11 – EVIDENCE

(NONE)

XI. APPENDIX 111 – RELATED PROCEEDINGS

(NONE)